

## Department of the Army, DoD

## § 536.13

(b) *Claims involving workmen's compensation carriers.* The settlement of a claim involving a claimant who has elected to receive workmen's compensation benefits under local law may require the consent of the workmen's compensation carrier and in certain jurisdictions the State agency with authority over workmen's compensation awards. Accordingly, claims approval and settlement authorities should be aware of local requirements.

### § 536.11 Appeals and notification to claimant as to denial of claims.

(a) *General.* The nature and extent of the written notification to the claimant as to the denial of his claim should be based on whether the claimant has a judicial remedy following denial or whether he has an administrative recourse to appeal.

(b) *Final Actions under the Federal Tort Claims Act (28 U.S.C. 2671-2680) § 536.50.* If the settlement authority has information available which could possibly be a persuasive factor in the decision of the claimant as to whether to resort to litigation, such information may be orally transmitted to the claimant and, in appropriate cases, released under normal procedures in accordance with AR 340-17. However, the written notification of the denial should be general in nature; for example, denial on the weaker ground of contributory negligence should be avoided, and the inclination should be to deny on the basis that the claimant was solely responsible for the incident. The claimant will be informed in writing of his right to bring an action in the appropriate United States District Court not later than 6 months after the date of mailing of the notification.

(c) *Denials under the MCA (10 U.S.C. 2733) §§ 536.20 through 536.35 and the NGCA (32 U.S.C. 715) §§ 536.70 through 536.81.* Claims disapproved under these statutes are subject to appeal and the claimant will be so informed. Also, the notice of disapproval will be sufficiently detailed to provide the claimant with an opportunity to know and attempt to overcome the basis for the disapproval. The claimant should not be afforded a valid basis for claiming surprise when an issue adverse to him

is asserted as a basis for denying his appeal.

(d) *Denials on jurisdictional grounds.* Regardless of the nature of the claim presented or the statute under which it may be considered, claims denied on jurisdictional grounds which are valid, certain, and not easily overcome and in which for this reason no detailed investigation as to the merits of the claim is conducted, should contain in the denial letter a general statement to the effect that the denial on such grounds is not to be construed as an expression of opinion on the merits of the claim or an admission of liability. If sufficient factual information is available to make a tentative ruling on the merits of the claim, liability may be expressly denied.

(e) *Where claim may be considered under more than one statute.* In cases in which it is doubtful as to whether the MCA (§§ 536.20 through 536.35) or the NGCA (§§ 536.70 through 536.81) or the FTCA (§ 536.50) is the appropriate statute under which to consider the claim, the claimant will be advised of the alternatives, for example, the right to sue or the right to appeal. Similarly, a claimant may be advised of his alternative remedies when the claimant is a military member and the issue of "incident to service" is not clear.

### § 536.12 Effect of payment.

Acceptance of an award by the claimant, except for an advance payment, constitutes for the United States, and for the military member or civilian employee whose act or omission gave rise to the claim, a release from all liability to the claimant based on the act or omission.

### § 536.13 Advance payments.

(a) *Purpose.* This section implements the Act of 8 September 1961 (75 Stat. 488, 10 U.S.C. 2736), as amended by Public Law 90-521 (82 Stat. 874), Public Law 98-564 (98 Stat. 2918) and Public Law 100-456. No new liability is created by 10 U.S.C. 2736, which merely permits partial advance payments on meritorious claims as specified in this section.

(b) *Conditions for advance payment.* An advance payment not in excess of \$100,000 is authorized in the limited